

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA, :
: 11-CR-29 (LDW)
v. : May 21, 2012
DOMINICK DELIO, : Central Islip, NY
Defendant. :
:
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TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE ARLENE R. LINDSAY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: LORETTA LYNCH, ESQ.
UNITED STATES ATTORNEY
BY: SPIROS MUSTAKIS, ESQ.
ASSISTANT U.S. ATTORNEY
271 Cadman Plaza East
Brooklyn, New York 11201

For the Defendant: RAYMOND G. PERINI, ESQ.

Audio Operator:

Court Transcriber: ARIA SERVICES, INC.
c/o Elizabeth Barron
102 Sparrow Ridge Road
Carmel, NY 10512
(845) 260-1377

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transcript produced by transcription service

1 THE CLERK: Calling 11-CR-29, United States of
2 America v. Dominick Delio.

3 Please state your appearances.

4 MR. MUSTAKIS: For the government, your Honor,
5 Spiros Mustakis (ph).

6 MR. PERINI: And for Mr. Delio, it's Perini &
7 Hoerger by Raymond G. Perini. Good morning, your Honor.

8 THE COURT: All right, I understand we're here for
9 a plea. Is that correct?

10 MR. MUSTAKIS: That is correct, your Honor.

11 THE COURT: Okay, so let's swear in the defendant.

12 (Defendant is sworn.)

13 THE COURT: One of the problems is that the
14 referral order hasn't been signed by the defendant. Wait,
15 maybe he did sign it. All right.

16 Mr. Delio, is that the correct pronunciation?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: All right, Mr. Delio, first, I want to
19 tell you that this case is assigned to Judge Wexler. I
20 don't know if you've already appeared before him.

21 THE DEFENDANT: Yes.

22 THE COURT: But you have the absolute right to ask
23 Judge Wexler to take your plea. He's going to sentence you.
24 He's going to be the sentencing judge.

25 Do you understand that?

1 THE DEFENDANT: Yes, I do.

2 THE COURT: So knowing that, do you still -- are
3 you still willing to let me take your plea?

4 THE DEFENDANT: Yes.

5 THE COURT: Okay, so let's go forward with the
6 allocution. Now, you filled out a form, a plea form which
7 had a lot of questions in it.

8 At the time that you answered those questions, did
9 you answer them truthfully and to the best of your ability?

10 THE DEFENDANT: Yes, I did.

11 THE COURT: Okay. So what I want to do is, on the
12 record, go over those questions with you, so that your plea
13 can be binding, okay?

14 We can start by you telling me, how old are you?

15 THE DEFENDANT: 54, your Honor.

16 THE COURT: And you are a citizen, I take it?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Mr. Delio, are you under the care of
19 any kind of a doctor or physician, psychiatrist, anything
20 like that?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: Okay. And what about -- have you ever
23 had a problem with narcotics addiction?

24 THE DEFENDANT: No, your Honor.

25 THE COURT: Have you ever been hospitalized for

1 that?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: I want to know if your mind is clear
4 today.

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And in that regard, in the past 24
7 hours, have you had any kind of -- did you take any
8 medication, anything?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: You don't take any medication at all?
11 The answer is no?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: Have you had anything to drink or
14 anything like that, any alcohol?

15 THE DEFENDANT: No, I don't drink, your Honor.

16 THE COURT: Okay. So right now, your mind is as
17 clear as it could be, correct?

18 THE DEFENDANT: Yes.

19 THE COURT: I saw you give me the "thumbs up."

20 THE DEFENDANT: I'm good.

21 THE COURT: Okay. Because one of the things I
22 want to make sure is that you'll understand the consequences
23 here of taking a plea.

24 So let me ask you, Mr. Perini, you've talked to
25 your client about this plea?

1 MR. PERINI: I have, your Honor.

2 THE COURT: Are you satisfied he understands the
3 consequences of entering a plea?

4 MR. PERINI: I am.

5 THE COURT: Are you satisfied he's capable of
6 understanding the nature of these proceedings?

7 MR. PERINI: Absolutely.

8 THE COURT: Mr. Delio, I want to tell you first,
9 you have the right to plead not guilty.

10 Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Let me go over with you what happens
13 when you enter a plea of not guilty, because under the
14 Constitution and the laws of the United States, you would be
15 entitled to a speedy trial, and you would be permitted to
16 have -- permitted to have your lawyer present throughout the
17 entirety of the case, to defend you in that case.

18 Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: If it got to the point where you
21 couldn't afford a lawyer, then one would be appointed for
22 you by the Court.

23 Do you understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: So at a trial, you would be presumed

1 to be innocent and it would be up to the government to
2 establish your guilt by proof beyond a reasonable doubt.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: You'd have no obligation to prove you
6 were innocent. The burden rests entirely on the government
7 to establish your guilt. And if the government failed to
8 convince a jury that you were guilty beyond a reasonable
9 doubt, then the jury would have a duty to find you not
10 guilty.

11 You understand that's how a trial goes.

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: And also at a trial, the witnesses for
14 the government would have to come to court and they would be
15 required to testify in your presence. And your lawyer would
16 have a right to examine those witnesses by asking them
17 questions. You could object to the evidence that the
18 government offered and offer evidence on your behalf.

19 That's at trial, okay?

20 Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: And the other thing that could happen
23 at a trial is, you would have the right to testify if you
24 wanted to do that, but you couldn't be required to testify,
25 because you have the right not to incriminate yourself. So

1 if you, in a trial, decided you didn't want to testify, what
2 the judge would do is tell the jury they couldn't hold that
3 against you, because you have that right.

4 Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: But if you go forward with this plea
7 and the Court accepts the plea, all those rights I just
8 discussed with you are gone. There's not going to be any
9 trial. What would happen is, based on your plea of guilty,
10 the Court would enter a judgment of guilt, as though a jury
11 had returned it. But there would be no going back from
12 that. There's no way, once you enter that plea of guilty,
13 that you could undo it, attack it, change your mind about
14 it.

15 Do you understand that?

16 THE DEFENDANT: Yes, I do, your Honor.

17 THE COURT: The only thing that would be left open
18 to you is to challenge the sentence that the Court enters,
19 but even that is limited based on some of the terms of your
20 plea agreement.

21 Do you understand that?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: One of the other things I have to warn
24 you about is that if you go forward with this plea, I'm
25 going to have to ask you questions about what you did, in

1 order to satisfy the Court that you are in fact guilty of
2 the crimes that you're pleading guilty to, and you would be
3 required to give up your right not to incriminate yourself
4 and give me answers to the questions.

5 Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: So are you willing to give up these
8 rights that I've just discussed with you?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Okay. Now, I know that there's a plea
11 agreement here. So I don't know if you're prepared for
12 this, Mr. Matsukis, but you might -- Mustakis, sorry. You
13 might want to summarize the plea agreement for the record.

14 MR. MUSTAKIS: Thank you, your Honor. With
15 respect to the plea agreement, the defendant is agreeing to
16 plead guilty to Count 1 of the indictment. With respect to
17 the offense level, Racketeering Act 5 carries a -- estimated
18 by the government of 12 points. Racketeering Act 7 is a
19 total of 12 points. Therefore, there is an adjusted offense
20 level of 19 plus 2 points for the defendant's role as a
21 manager or supervisor, which has a total of 21 points.

22 However, because Mr. Delio is demonstrating
23 acceptance of responsibility, a two-level reduction would be
24 sought. Therefore, the adjusted offense level of 19 carries
25 a range of imprisonment of 30 to 37 months. With respect to

1 testify pleading before April 28th of this year, an
2 additional one-level reduction may be warranted, which would
3 result in an adjusted offense level of 18.

4 I'm sorry, your Honor. With respect to the plea
5 agreement, I would seek to have on page 4 -- that amended to
6 today's date, which is May 21. I apologize for that.

7 THE COURT: What paragraph is that?

8 MR. MUSTAKIS: That is in paragraph 2 on page 4.

9 THE COURT: Okay.

10 MR. MUSTAKIS: The defendant is accepting the plea
11 -- we had this plea scheduled for last week, your Honor.
12 Unfortunately, there was an emergency.

13 THE COURT: Right.

14 MR. MUSTAKIS: Therefore, the defendant would be
15 entitled to the one-point reduction.

16 THE COURT: So we're amending it to read what
17 date?

18 MR. MUSTAKIS: Today's date.

19 MR. PERINI: May 21st, your Honor.

20 THE COURT: Which is what?

21 MR. PERINI: May 21st.

22 MR. MUSTAKIS: May 21st.

23 THE COURT: That was a sly way of asking you,
24 what's today's date?

25 MR. MUSTAKIS: I had to look it up, your Honor.

1 Therefore, the adjusted offense level of 18, the government
2 estimates carries a range of imprisonment of 27 to 33
3 months. The review of the criminal history shows that he
4 has none and, therefore, is in a criminal history category
5 1. With respect to paragraph 4, your Honor, the defendant,
6 as the Court has already mentioned, is waiving some of his
7 rights, and the defendant agrees not to file an appeal or
8 otherwise challenge the conviction or sentence, in the event
9 the Court imposes a term of imprisonment of 41 months or
10 below.

11 Moving forward, your Honor, there is one more
12 issue I know Mr. Perini and I have spoken about. There are
13 16 defendants in this indictment. All of them are
14 forfeiting the items seized during the search warrants of
15 their homes and illegal gambling operations.

16 With respect to Mr. Delio, I'd just like to make
17 the record clear what items are attributable to Mr. Delio.
18 They're on page 7, Roman numeral 3: \$148,460 that was
19 recovered in a safety deposit box at TD Bank in Hauppauge.
20 And then two of the gambling operations that Mr. Delio
21 managed or supervised, which would be on page 8, Roman
22 numeral 8 and Roman numeral 9, it's assorted televisions,
23 \$400 in cash; and finally, the items seized at Mr. Delio's
24 home, which is 7 Ridge Court in Hauppauge, which is an
25 additional \$1,916 in cash and some other assorted items.

1 THE COURT: Okay.

2 Mr. Delio, the plea agreement that you executed is
3 fairly lengthy. It looks to be about fourteen pages long.

4 Did you read this document?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And you went over it with your lawyer?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: And he explained some of the
9 provisions to you?

10 THE DEFENDANT: Yes, he did.

11 THE COURT: Okay, because I'm going to highlight a
12 couple of things. I'm not going to go over the entire
13 document but just to highlight a few things for you, to make
14 sure you're clear on them.

15 You see, the plea agreements do a couple of
16 things: They calculate, as counsel said, what the
17 government believes is the guideline range for you, okay?

18 You discussed the sentencing guidelines with your
19 lawyer?

20 THE DEFENDANT: Yes, I did.

21 THE COURT: The guideline range is a recommended
22 range of imprisonment that Judge Wexler will consider at the
23 time of sentencing. But notice I said "recommended," okay?
24 So Judge Wexler has the option to go up above the guideline
25 range or go down below the guideline range, depending on the

1 facts and circumstances surrounding the case, your
2 background and the information that's made known to Judge
3 Wexler when you go back to Probation and they do a report.
4 Because what will happen after this plea is done -- at some
5 point, you'll go to the Probation Department and they will
6 do a complete review of your case, your personal history,
7 your background, and they will report to Judge Wexler.

8 He'll have that report, your attorney will have
9 the report as well and access to the report. And in that
10 report, there will be a recommendation from Probation as to
11 what the guideline range should be. And what's important
12 here is, their recommendation can be different from what the
13 government says, okay? It could be higher, it could be
14 lower, it could be the same.

15 The thing I need you to be clear on is, what the
16 government calculates here in your plea agreement is their
17 best guess based on what they know about the case. It's
18 not, you know, pulled out of thin air but it's also a
19 calculation based on the information they have. If
20 Probation finds out something that changes the formula, you
21 don't get to withdraw your plea.

22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Okay. So one of the things I like to
25 do is to talk to -- remind you about what's the worst-case

1 scenario. You see, you've heard from the government and
2 they've said, listen, Judge, based on our calculations and
3 what we know of the defendant, we believe that he would be
4 eligible for a level 21, okay? That's where they started.
5 And we're of the opinion that a two-level reduction is
6 warranted because he's accepted responsibility, as you
7 appear to be doing now, and that would bring it down to a
8 19. And then furthermore, they've agreed to bring it down
9 even one level more, in order to expedite this plea. So
10 they've come down to an offense level of 18, which carries a
11 range of 27 to 33 months, okay?

12 But as I told you, that's the government's
13 calculation. They also conditioned it by saying, listen, we
14 believe Mr. Delio is a category 1, meaning your criminal
15 history is such that it won't bump up the numbers, okay,
16 based on what they know. Now, if the review from Probation
17 turns up something that bumps up the numbers, that says
18 you're not entitled to a category 1, well, that could
19 happen.

20 Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Okay. And I told you that Judge
23 Wexler has a certain amount of discretion here. He could
24 follow the guideline range. But if he sees facts that
25 warrant an upward departure -- he can't do it arbitrarily

1 but there would be -- there has to be a good basis for it.
2 But if he sees something that he believes provides a good
3 basis to go over the guideline range or go under it, because
4 it could work in your favor, also, he may do that.

5 So let me just review with you what's the worst-
6 case scenario. I mean, you know, there's only -- he can't
7 go to infinity, and that's why the government includes in
8 the plea what's the maximum penalty that can be imposed in
9 connection with the count you're pleading guilty to. So
10 this is what appears on page 1.

11 The maximum term of imprisonment is twenty years,
12 the minimum term is zero. The maximum supervised release
13 that any judge can sentence you to is three years, which
14 would follow any term of imprisonment. The maximum fine
15 that can be imposed is \$250,000 or twice the gross profits
16 of the enterprise. Restitution would be in an amount to be
17 determined by the Court. There would be a \$100 mandatory
18 special assessment and the other penalties could amount to
19 criminal forfeiture, which is pretty much described in
20 paragraphs 6 through 14. So it's important that you know
21 what could go wrong, I guess. I mean, not that anybody
22 anticipates it, but it could happen.

23 Do you understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Okay. Now, if things don't come out

1 the way the government believes it might or what your
2 attorney might have even said to you, you do not get to
3 withdraw your plea. That's why I'm here to give you these
4 warnings.

5 Do you understand that?

6 THE DEFENDANT: Yes, I do, your Honor.

7 THE COURT: So if -- again, I'm sure you talked to
8 your lawyer about this and you heard from the government.
9 If they're both wrong in their guidelines calculations and
10 Judge Wexler determines based on everything he knows in this
11 case that the guideline range calculations should be higher
12 or lower, you don't get to withdraw your plea and you're
13 subject to the sentence of the defendant.

14 Do you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Okay. One of the things that I saw in
17 this agreement is that -- it's something I wanted to point
18 out to you. You do give up your right -- remember, I told
19 you before that you don't get to ever go back from pleading
20 guilty once you enter a plea of guilty. Once we go through
21 this whole process and I explain everything to you, and I'm
22 satisfied you understand it and I take your plea, there's no
23 going back from your plea no matter what.

24 But I did tell you that you would have a limited
25 right to challenge the sentence of Judge Wexler. However,

1 the limitation is as follows: If Judge Wexler sentences you
2 to 41 months, that number or anything less, you give up your
3 right to challenge the sentence of the Court.

4 Are you clear on that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: So if after this plea, Judge Wexler,
7 for whatever reason he believes is appropriate -- again, it
8 would have to be reasonable -- sentences you to 41 months,
9 which is beyond your expectation, you would have no right to
10 challenge the sentence of the Court or to withdraw your
11 plea.

12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: If he sentences you to anything over
15 41 months, you can't withdraw your plea but you would
16 preserve the right to challenge the sentence of the Court.

17 Are you clear?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Okay. There's another provision in
20 this agreement that I just want to kind of touch upon, and
21 that is -- it appears on the bottom of page 5 and into page
22 6.

23 You see where the government agrees that they're
24 not going to bring any further charges against you based on
25 your activities in connection with the Keyland (ph) Avenue

1 Club? Do you see that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Okay. But everything that the
4 government is agrees to is based on the information now
5 known to the office. Do you see where it says that on the
6 next page? Based upon the information now known to the
7 office, it will take no position concerning where within the
8 guideline range the sentence should fall and it will not
9 make a motion for an upward departure under the sentencing
10 guidelines. But they do preserve the right -- are you
11 listening to me?

12 THE DEFENDANT: Yes.

13 THE COURT: They do, however, preserve the right
14 that if information relevant to sentencing comes to their
15 attention that you withheld or that they didn't know about
16 at the time and it's significant, because it's not going to
17 be immaterial, it would have to be significant, they reserve
18 the right to not be bound by those paragraphs. That is,
19 they will take a position at sentencing if they think it's
20 appropriate and they might not give you that upward
21 departure -- and they might make a motion for an upward
22 departure. I should say both of those.

23 Do you see B and C?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Are you clear with what happens?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Okay. The rest of that paragraph 5 is
3 also highly important because it's all based on this notion
4 that some of what they've agreed to will no longer be
5 available to you if information relevant to sentencing
6 becomes known to them that they don't already know about,
7 okay? And let me just keep going with you because I think
8 this whole paragraph is significant.

9 One of the things they tell you is that if it
10 comes to pass that they learn information that's important
11 to sentencing, not only do you lose -- let me rephrase that.
12 The one thing that doesn't happen is, you don't get to
13 withdraw your plea. Again, the plea always sticks.

14 You got it?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Okay. The second thing that could
17 happen is if you violate any provision of this agreement,
18 not only are you not released from your plea of guilty, but
19 the government reserves the right to move for -- to be
20 relieved of its obligation to give you that one-level
21 downward adjustment for timely acceptance. So that when we
22 went from a 19 level to an 18 level, they're saying, we want
23 to be relieved of that responsibility if you violate the
24 provisions of the agreement. So that would kick you back to
25 the higher range, right?

1 Do you get that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: And they say, you don't get the one
4 level and, in addition, they're released from their
5 obligations under the provisions of paragraphs 5(a), (b) and
6 (c). So if they determine that you violated any provisions
7 of this agreement, then the commitments they make under
8 5(a), 5(b) and 5(c), they're no longer bound by.

9 You got it?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: So what does 5(a) say except that
12 they're going to dismiss certain counts against you based on
13 this agreement.

14 You see that?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: All right. So that's important to
17 know. And you don't get to withdraw your plea.

18 You get it?

19 THE DEFENDANT: Yes.

20 THE COURT: Obviously, it should tell you that
21 it's important to live up to your parts of -- your
22 obligations under the agreement. Presumably, they know
23 everything that's pertinent to sentencing that would affect
24 their evaluation of what's appropriate in your case, as to
25 how they should conduct themselves at the time of

1 sentencing.

2 Do you understand that?

3 THE DEFENDANT: Yes, I do, your Honor.

4 THE COURT: Okay. So there are still some
5 unanswered questions here. It may all work out in the way
6 that you hope and is sort of kind of outlined in this
7 agreement. But it's my job, not to scare you out of taking
8 a plea but to at least make sure your eyes are wide open and
9 you understand all the pitfalls that could occur but not
10 necessarily.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Now, these things can get complicated
14 and, you know, I try to make it as simple as possible, but I
15 need to know that you understood what I just explained to
16 you.

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you have any questions? You could
19 ask your lawyer if you want to talk to him about it first,
20 or you want to ask me a question.

21 THE DEFENDANT: No, we've gone over this.

22 THE COURT: Okay, so this is not new to you then.

23 THE DEFENDANT: Right.

24 THE COURT: Okay, good.

25 So one of the things that I want to make sure --

1 remember, I told you that the government has to prove its
2 case beyond a reasonable doubt. So in order to prove the
3 case in this -- as to the charges against you, what they
4 would have to establish is that in or about January -- and
5 between the months of January, 2007 -- I should say the
6 years -- and January, 2010, that within the Eastern District
7 and elsewhere, you and others, being persons employed by and
8 associated with La Cosa Nostra, which is defined as an
9 enterprise engaged in activities which affect interstate and
10 foreign commerce, that you participated, either directly or
11 indirectly, in the conduct of the affairs of that
12 enterprise, meaning La Cosa Nostra, through a pattern of
13 racketeering activity.

14 And then of course there are the racketeering acts
15 that are alleged. And in your case, it was Act 5.

16 Just Act 5, correct?

17 MR. MUSTAKIS: Racketeering Act 5 and Racketeering
18 Act 7, your Honor.

19 THE COURT: Okay, 5 and 7.

20 In your case, what they would have to prove for 5
21 and 7 is that in or about and between January, 2009 and May
22 of 2009, those being approximate dates, that you knowingly
23 and intentionally conducted, financed, managed or supervised
24 all or part of an illegal gambling enterprise, that is the
25 Keyland Avenue gambling enterprise. And that in doing so,

1 there were five or more persons who were involved in that
2 operation, and that the operation was in play for in excess
3 of thirty days and had a gross revenue of at least \$2,000 in
4 any single day. So that's what they would have to prove
5 beyond a reasonable doubt as to that count, 5.

6 And as to Racketeering Act 7, they would have to
7 show beyond a reasonable doubt that on or about and between
8 September 21 -- on or about that date, September 21, 2009,
9 also within the Eastern District of New York, that you and
10 others knowingly and intentionally used the mail in
11 interstate commerce, with the intention to distribute the
12 proceeds of the unlawful activity, that is the illegal
13 gambling enterprise, and that you did that in violation of
14 the law, and that you thereafter did perform and attempt to
15 perform the promotion, management, establishment or the
16 carrying on of the -- of the illegal enterprise, also in
17 violation of the statute 15 U.S. Code 1952(a)(1)(A) and (2).

18 So overall, it's the racketeering charge that is
19 -- you were involved witness this illegal enterprise, and 6
20 and 7 are actions that you took to further the activities of
21 the enterprise.

22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Okay. So all of that would have to be
25 proven by evidence which would establish your guilt of Count

1 1 and those racketeering acts beyond a reasonable doubt.

2 Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Because they're carried as separate
5 counts. All right.

6 Now, have you discussed with Mr. Perini the charge
7 that you're going to plead guilty to?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And you understand what it is you're
10 pleading guilty to?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: All right. And I've already told you
13 what the maximum sentence is and the fines that could apply
14 in that case, correct?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Finally, let me just make sure -- if
17 this sentence turns out to be more severe than you expected,
18 you realize that you're going to be bound by your guilty
19 plea and you're not going to be permitted to withdraw it.

20 Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: All right. Let me just ask, do you
23 have any questions you would like to me ask about any of
24 this up to this point?

25 THE DEFENDANT: No, your Honor.

1 THE COURT: Okay. You've gone over all of this
2 with your lawyer. Yes?

3 THE DEFENDANT: Yes.

4 THE COURT: So are you ready to enter a plea at
5 this point?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Mr. Perini, do you know of any legal
8 reason why the defendant should not be permitted to plead
9 guilty?

10 MR. PERINI: I do not, your Honor.

11 THE COURT: Mr. Delio, are you satisfied with your
12 lawyer up to this point?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And do you feel that your lawyer has
15 done a good job?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Okay. Then with respect to Count 1,
18 which includes Racketeering Acts 5 and 7, as outlined in
19 Counts 5 and 7, how do you plead?

20 THE DEFENDANT: Guilty, your Honor.

21 THE COURT: Are you entering this plea of guilty
22 voluntarily and of your own free will?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Has anyone threatened or forced you to
25 plead guilty?

1 THE DEFENDANT: No, your Honor.

2 THE COURT: So other than the agreement with the
3 government, which we've talked about on the record, has
4 anyone made any promises to you to cause you to plead
5 guilty?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Has anyone promised you what your
8 sentence is going to be?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: All right. So let me just go to Count
11 1, which is the count you pleaded guilty to.

12 Did you, as is charged in Count 1 -- you know, the
13 top of this is cut off, so I don't have the dates in front
14 of me, as to when Count 1 is charged.

15 MR. MUSTAKIS: Your Honor, would you like a copy
16 of my indictment, which is not cut off?

17 THE COURT: Yeah, let me see it because this is --
18 the dates are unclear to me.

19 Did you, as charged in Count 1, in or about and
20 between January, 2007 and January, 2010, those being
21 approximate dates, within the Eastern District of New York
22 and elsewhere, did you along with others, as a person who
23 was employed by and associated with La Cosa Nostra, which is
24 described as an enterprise engaged in and the activities of
25 which affected interstate and foreign commerce, knowingly

1 and intentionally conspire to violate Title 18 United States
2 Code Section 1962(c); that is, that you conducted and
3 participated, directly and indirectly, in the conduct of the
4 affairs of that enterprise, La Cosa Nostra, through a
5 pattern of racketeering activity.

6 And the racketeering activity that you
7 participated in is -- in conducting the affairs of the
8 enterprise were as described in 5 and 7, that you, between
9 January, 2009 and May of 2009, also within the Eastern
10 District of New York and also with the assistance of others,
11 knowingly and intentionally conducted, financed, managed,
12 supervised or directed the activities of an illegal gambling
13 business, that is the Keyland Avenue gambling business in
14 Bohemia, and that that operation involved five or more
15 persons, who were involved in the conduct of the Keyland
16 gambling business, and it was a continuous operation that
17 operated for at least thirty days or thirty days or more,
18 and had a gross revenue of at least \$2,000 in any single
19 day, that being one of the activities you did in furtherance
20 of the enterprise La Cosa Nostra.

21 And the second one being that on or about
22 September 21, 2009, also within the Eastern District of New
23 York, together with others, you knowingly and intentionally
24 used the mail in interstate commerce, with the intent to
25 distribute the proceeds of the illegal gambling business,

1 and that you thereafter did perform and attempt to perform
2 the management and the promotion and the carrying on and
3 facilitation of that illegal gambling business by use of the
4 mails, okay?

5 That's what you're pleading guilty to.

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: So let me ask you this: Did you do --
8 did you, as charged in those counts, do the actions that are
9 described in the indictment?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: So what I need to do for me is to tell
12 me in your own words what you did. I need to hear it from
13 you.

14 THE DEFENDANT: I managed a club on Keyland and
15 what was the other one -- Knickerbocker.

16 THE COURT: Where were they located?

17 THE DEFENDANT: In Bohemia.

18 THE COURT: Both of them?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. And how long were you involved
21 in the management?

22 THE DEFENDANT: Since the opening.

23 THE COURT: Which was when?

24 THE DEFENDANT: I don't know the dates.

25 THE COURT: Give me an approximate date.

1 THE DEFENDANT: '07.

2 THE COURT: '07.

3 THE DEFENDANT: Right.

4 THE COURT: Until when?

5 THE DEFENDANT: Maybe six months, five months.

6 THE COURT: So beginning in '07, for about five or
7 six months?

8 THE DEFENDANT: Right, right.

9 THE COURT: You were the manager of both or just
10 the one?

11 THE DEFENDANT: Both, your Honor.

12 THE COURT: Okay. And what did you know about the
13 operation? What was it?

14 THE DEFENDANT: It was just a card group, your
15 Honor. They played cards.

16 THE COURT: Okay. Both of them?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: And they operated, each one of them,
19 for over thirty days?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Had more than five employees involved?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Were the revenues in any day \$2,000 or
24 more?

25 THE DEFENDANT: Gross, yes, your Honor.

1 THE COURT: Okay. And what did this have to do
2 with advancing the enterprise that is La Cosa Nostra?

3 THE DEFENDANT: Well, a friend of mine that's been
4 my friend for fifteen years, he was actually part of it and
5 he was a made guy.

6 THE COURT: Okay. Did you know that the proceeds
7 of the business were going to assist La Cosa Nostra?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: Okay.

10 THE DEFENDANT: Yeah. I guess I mailed it to
11 Frankie, so I knew of the mailing to Frankie.

12 THE COURT: Okay. Frank being the made guy?

13 THE DEFENDANT: Correct, your Honor.

14 THE COURT: Okay. Was there any question that you
15 knew he was a made guy?

16 THE DEFENDANT: I'm sorry, your Honor?

17 THE COURT: You knew he was a made guy.

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: And what did you understand a made guy
20 -- what was he made -- I know what the language is but I
21 think you need to tell me.

22 THE DEFENDANT: I guess he had affiliates but I
23 knew him and he never did anything with me, so I don't know
24 what he was doing.

25 THE COURT: Well, what is your definition of a

1 made guy? What do you mean by that?

2 THE DEFENDANT: Cosa Nostra.

3 THE COURT: Okay, so you knew he was affiliated
4 with the Cosa Nostra.

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And you knew he was getting some of
7 the proceeds from the gambling business that the two of you
8 were working together?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: What did you do with the mails? You
11 mailed the proceeds to --

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Okay. Directly to him?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: All right. And you knew that
16 operating this illegal gambling -- this gambling enterprise
17 was unlawful?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: But you went forward anyway?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Mr. Mustakis, is there anything
22 missing from that allocution?

23 MR. MUSTAKIS: No, your Honor. I'd like to just
24 clarify the record. Mr. Delio discusses a Frank. Mr. Frank
25 Politi (ph) is one of the codefendants in the indictment.

1 THE COURT: Okay.

2 MR. MUSTAKIS: That the money was mailed to Mr.
3 Politi's home in Orlando, Florida, that the defendant would
4 receive the criminal proceeds for the week at his home and
5 then use the United States Postal Service to mail them to
6 Florida.

7 THE COURT: So it was more than once?

8 MR. MUSTAKIS: It was more than once. It was
9 charged four times in the indictment, your Honor.

10 THE COURT: Okay.

11 MR. MUSTAKIS: And with respect to the rooms, the
12 illegal gambling operations were, as stated in the
13 indictment, on or about 2007 to 2009 open. The defendant
14 was involved with a couple of the codefendants, namely Mr.
15 Frank Politi and Mr. Anthony Saba (ph), that they
16 managed/operated that room. And as the Court has gone
17 through, satisfied all the elements. Thank you.

18 THE COURT: Okay.

19 So there was more than one mailing, Mr. Delio?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: So you'd get the money and then you'd
22 send it to, what was it, Frank?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: In Florida, is that right?

25 THE DEFENDANT: Correct.

1 THE COURT: All right. Let me just ask the
2 government, how were you going to prove this case without
3 the plea?

4 MR. MUSTAKIS: Yes, your Honor. The government
5 would prove the case beyond a reasonable doubt in various
6 ways: The telephone number -- the telephone instrument
7 number that the defendant had during the time period in 2009
8 was a court-authorized wiretap. The government amassed
9 voluminous telephone conversations of the defendant
10 operating and showing a management control of the illegal
11 gambling operations, as well as wiretaps of the codefendants
12 in this indictment, where they would all discuss the
13 operations of the rooms as well as the mailing of the
14 packages to Mr. Frank Politi in Florida.

15 Search warrants, numerous search warrants were
16 executed on both rooms that Mr. Delio was discussing. The
17 Keyland Avenue club as well as the Knickerbocker club were
18 both -- search warrants were executed by the Suffolk County
19 Police Department. Evidence of illegal gambling was found
20 there, records. A search warrant of Mr. Delio's house was
21 executed, where further evidence of the racketeering
22 conspiracy was found, as well as undercover police officers
23 and informants were in the room to observe the elements as
24 stated by the 1955 prohibition of illegal gambling.

25 That would be physical surveillance, also

1 observing the defendant operating the rooms, and with
2 respect to the packages of the mail being sent to the U.S.
3 Postal Service. Once the packages were delivered to the
4 post office, with a search warrant, the government was able
5 to open up the packages and review the illegal gambling
6 records as well as the U.S. currency that was sent to Frank
7 Politi in Florida.

8 THE COURT: The gambling records were sent there
9 as well?

10 MR. MUSTAKIS: Yes.

11 THE COURT: Okay.

12 Did you send those records, Mr. Delio?

13 THE DEFENDANT: No, I didn't mail them but I
14 caused them to be mailed.

15 THE COURT: Okay, all right. Then based upon the
16 information that's given to me, I find that you, Mr. Delio,
17 are acting voluntarily, that you understand your rights and
18 the consequences of this plea, and that there is a factual
19 basis for it. Therefore, I will accept your plea of guilty
20 to Count 1 and I will recommend that Judge Wexler do the
21 same, that is Count 1 based on the racketeering acts
22 described in Counts 5 and 7. I'll recommend that Judge
23 Wexler do the same.

24 Is there anything else I have to address?

25 MR. MUSTAKIS: No, your Honor.

1 THE COURT: Mr. Perini?
2 MR. PERINI: No, your Honor.
3 THE COURT: Okay. Good luck to you, Mr. Delio.
4 THE DEFENDANT: Thank you, your Honor.

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18 I certify that the foregoing is a correct transcript
19 from the electronic sound recording of the proceedings in
20 the above-entitled matter.

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25 ELIZABETH BARRON

June 25, 2012